



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,606	12/05/2003	Allen C. Thompson	10030636-1	2898
22878 7590 12/28/2007 AGILENT TECHNOLOGIES INC. INTELLECTUAL PROPERTY ADMINISTRATION, LEGAL DEPT. MS BLDG. E P.O. BOX 7599 LOVELAND, CO 80537				
EXAMINER RAMILLANO, LORE JANET				
ART UNIT PAPER NUMBER 1797				
NOTIFICATION DATE DELIVERY MODE 12/28/2007 ELECTRONIC				

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPOPS.LEGAL@agilent.com

Office Action Summary	Application No.	Applicant(s)	
	10/729,606	THOMPSON ET AL.	
	Examiner	Art Unit	
	Lore Ramillano	1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-16 and 34-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 34-37 is/are allowed.
- 6) ☒ Claim(s) 9-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/5/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. In applicant's reply filed on 10/4/07, applicant amended claims 9, 16, and 34. Claims 9-16 and 34-37 are pending and under examination in the application.

Response to Amendment

Claim Objections

2. The objection to claim 34 is withdrawn.

Claim Rejections - 35 USC § 112

3. The rejection of claim 16 under 35 U.S.C. 112, second paragraph, is withdrawn.

Prior art rejections

4. The rejections over the prior art are maintained.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. **Claims 9-14 and 16** are rejected under 35 U.S.C. 102(e) as being anticipated by Weinberger et al. ("Weinberger," US Pub. No. 2004/0248318).

Weinberger discloses an assay device comprising: a base; a cover; a clamping member; and a flexure and a spring element. Weinberger further discloses that at least one flexure is a separate

component from the base and cover; at least one separate flexure is a clamping member flexure; the cover is a flexure; the base is a flexure; and is capable of performing the functional language recited in claims 14 and 16. (i.e. [0108]-[0116]).

7. **Claims 9-16** are rejected under 35 U.S.C. 102(e) as being anticipated by Eichele et al. ("Eichele," US 6623701).

Eichele discloses an assay device comprising: a base; a cover; a clamping member; and a flexure and a spring element. Eichele further discloses that at least one flexure is a separate component from the base and cover; at least one separate flexure is a clamping member flexure; the cover is a flexure; the base is a flexure; at least one spacer and a hardstop; and is capable of performing the functional language recited in claims 14 and 16. (i.e. column 3, line 7 to column 8, line 9).

Claim Rejections - 35 USC § 103

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. **Claims 9-11 and 14-16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowen (US 5053197) in view of Eichele.

Bowen discloses an assay device comprising: a base; a cover; and a flexure. Bowen further discloses that at least one flexure is a separate component from the base and cover; a spacer and a hardstop (i.e. column 4, lines 16-40; column 6, line 63 to column 8, line 64).

Bowen does not specifically disclose a clamping member.

Eichele discloses a specimen chamber (10) for the liquid treatment of at least one specimen (90) comprises a base plate (20) and a carrier plate (30), between which a gap-formed

accommodation space is formed for the specimen, whereby the base plate and carrier plate (20, 30) are held together with a clamping device (60, column 8, lines 1-8) in a frame arrangement (50), and in order to form the accommodation chamber are separated from one another by spacer elements (40), and the base plate (20) features, at an intake (11) on the side pointing towards the carrier plate (30), a tapering shape in order to form a wedge-shaped liquid reservoir (21).

It would have been obvious to a person of ordinary skill in the art to modify Bowen by including a clamping member to hold the cover and base together, as disclosed in Eichele, because it would be beneficial to have an additional mechanism for securing the top and bottom members of Bowen's invention.

Allowable Subject Matter

10. Claims 34-37 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record (Eichele) fails to teach or fairly suggest having a bridge comprising at least two extending arm portions that terminate in feet portions and a bore; and a rotatable screw disposed within the bridge, in combination with the remaining features and elements of the claimed invention.

Response to Arguments

11. Applicant's arguments filed 10/4/07 have been fully considered but they are not persuasive.

Rejection by Weinberger

In response to applicant's argument that Weinberger does not disclose any element equivalent to the flexure or spring element recited in the applicant's claims, examiner disagrees. Weinberger discloses in figs. 6 and 6A, for example, a flexure element, which is indicated as 602 in

fig. 6 and 612 in fig. 6A. Weinberger's flexure element reads on applicant's recited flexure because applicant's recited flexure and Weinberger's flexure element are both made of the same chemical composition, i.e. a plastic material (specification from Published Application, i.e. para. [0113] and Weinberger, para. [0114]). Because Weinberger discloses an element that has the same chemical composition as applicant's recited flexure element, the properties, i.e. flexure, applicant claims are necessarily present in Weinberger. Thus, Weinberger's element 602 reads on the recited flexure element.

In response to applicant's argument that Weinberger is not capable of being actuated to apply a force to the cover and base in a manner sufficient to produce a substantially uniform distance between an array assembly and backing element, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Here, because Weinberger discloses the structural limitations positively recited in the claims, Weinberger reads on the functional language recited in these claims.

Rejection by Eichele

In response to applicant's argument that Eichele does not disclose any element equivalent to the flexure or spring element recited in the applicant's claims, examiner disagrees. Eichele discloses in fig. 1, for example, a flexure element, which is indicated as 41. Eichele's flexure element reads on applicant's recited flexure because applicant's recited flexure and Eichele's flexure element are both made of the same chemical composition, i.e. a plastic material (specification from Published Application, para. [0113] and Eichele, i.e. column 5, line 68 to column 6, line 22). Because Eichele

discloses an element that has the same chemical composition as applicant's recited flexure element, the properties, i.e. flexure, applicant claims are necessarily present in Eichele. Thus, Eichele's element 42 reads on applicant's flexure element.

In response to applicant's argument that Eichele is not capable of being actuated to apply a force to the cover and base in a manner sufficient to produce a substantially uniform distance between an array assembly and backing element, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Here, because Eichele discloses the structural limitations positively recited in the claims, Eichele reads on the functional language recited in these claims.

Rejection over Bowen in view of Eichele

In response to applicant's argument that Bowen does not disclose or suggest a separate flexure element, examiner disagrees. According to the recited disclosure in the specification (Published Application, i.e. para. [0130]), it appears that the recited flexure element may be broadly interpreted to be in any component in the recited assay device. Here, Bowen discloses a flexure element since Bowen's assay element 12 comprises flexure.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the

Application/Control Number:
10/729,606
Art Unit: 1797


Page 7

mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lore Ramillano whose telephone number is (571) 272-7420. The examiner can normally be reached on Mon. to Fri. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lore Ramillano
Examiner
Art Unit 1797


Jill Warden
Supervisory Patent Examiner
Technology Center 1700